

James H. Wilkins, #116364
WILKINS, DROLSHAGEN & CZESHINSKI LLP
6785 N. Willow Ave.
Fresno, CA 93710
Telephone: (559) 438-2390
Facsimile: (559) 438-2393

(SPACE BELOW FOR FILING STAMP ONLY)

FILED
TULARE COUNTY SUPERIOR COURT
VICTORIA DIVISION

OCT 28 2019

STEPHANIE CAMERON, CLERK
BY: 

Attorneys for Petitioner, James Gregory Nunley

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

JAMES GREGORY NUNLEY, an
individual,

Case Number **280972**

PETITION FOR WRIT OF MANDATE

Petitioner,

v.

CITY OF TULARE, and Does 1 through
25, inclusive,

Respondents.

Petitioner hereby alleges and complains as follows:

I.

PARTIES

1. Petitioner James Gregory Nunley ("Petitioner") is an individual who lives in the City and County of Tulare and is a duly elected official of the City Council for the City of Tulare. Petitioner is entitled to pursue this action as "every person in this state" may obtain access to "public records" and may institute an action for writ of mandate for disclosure of such records. See Government Code §6258.

2. Respondent City of Tulare ("City") is a municipal corporation in the State of California and a local agency within the scope of California Public Record Act that may be compelled to produce improperly withheld records under Government Code §6252(a).

3. Respondents DOE 1 through DOE 10 (hereinafter “DOES”) are sued herein under fictitious names. Their true names and capacities are unknown to Petitioner. When their true names and capacities are ascertained, Petitioner will amend this complaint by inserting their true names and capacities herein. Petitioner is informed and believes and thereon alleges that each of the fictitiously named Respondents are responsible in some manner for the occurrence herein alleged and that Petitioner’s damages as herein alleged were proximately caused by DOES 1 through 10.

4. Petitioner is informed and believes and thereon alleges that at all times herein mentioned, DOES 1-10 were the agents, servants, and employees of their co-Respondents and in doing the things hereinafter alleged were acting in the scope of their authority as agents, servants, and employees, and with the permission and consent of their co-Respondents.

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction under Government Code § 6258 and § 6259.

6. Venue is proper in this Court because the records in question are situated in the City of Tulare, County of Tulare. See Government Code § 6259(a).

III.

FACTS COMMON TO ALL CLAIMS

7. Respondent City of Tulare maintains the records of the inquiry of a personnel complaint by City of Tulare employee, Lieutenant Jerod Boatman, against City of Tulare Council Member Carlton Jones in his capacity as a City Council member relating to City Council meetings on April 2, 2019 and May 7, 2019. Specifically, Respondent City of Tulare retained an outside attorney to investigate a personnel matter relating to complaints of City of Tulare Police Lieutenant Jerod Boatman against City of Tulare Council Member Carleton Jones. The investigation resulted in a written report by the outside investigator/attorney hired by Respondent City of Tulare to investigate the personnel matter. This report constitutes a "public record" under the California Public Records Act.

8. The information contained in the requested records relate to the report prepared after the inquiry about the actions of Council Member Carlton Jones and the complaint alleged by City

1 of Tulare Police Lieutenant Jerod Boatman against Council Member Carlton Jones. The report
2 prepared by an outside attorney hired by Respondent City of Tulare to investigate the personnel
3 matter raised by the complaint of Lieutenant Jerod Boatmen against Council Member Carlton Jones
4 does not contain any confidential information.

5 9. On or about, August 30, 2019 Petitioner requested that Respondent City of Tulare
6 provide him with access to or copies of the records/report relating to the inquiry about the actions
7 of Council Member Carlton Jones arising from events during or after the City Council meetings on
8 April 2, 2019 and May 7, 2019. The request was reasonably made so that the documents could be
9 identified in accordance with Respondent City of Tulare's procedures and the California Public
10 Records Act. Specifically, the request was for the report prepared by the outside attorney hired by
11 Respondent City of Tulare to investigate the personnel matters raised by Lieutenant Boatman against
12 Council Member Jones. *See* Government Code §6253(6) ("(e)xcept with respect to public records
13 exempt from disclosure by express provisions of law, each...local agency upon a request for a copy
14 of records that reasonably describes an identifiable record or records, shall make the records
15 promptly available to any person").

16 10. Petitioner is at all times ready to tender the copy charges at .10¢ per page in costs to
17 cover Respondent City of Tulare's costs in providing copies of the requested records, namely the
18 report prepared by the outside attorney hired by Respondent City of Tulare to investigate the
19 personnel claims made by Lieutenant Boatman against Council Member Jones.

20 11. Respondent City of Tulare has refused to provide Petitioner with access to/or copies
21 of the requested records claiming that the requested records—the report prepared by the outside
22 attorney hired by Respondent City of Tulare to investigate the personnel claims made by Lieutenant
23 Boatman against Council Member Jones—are exempt from disclosure under the Public Records Act,
24 Government Code §6254(f), the law enforcement exemption.

25 12. Petitioner claims that the law enforcement exemption of the California Public
26 Records Act does not bar disclosure of the report of the investigation of the personnel matter
27 relating to claims made by a City of Tulare employee, Lieutenant Boatman, against Council Member
28 Jones. The report does not relate to any potential criminal activities or any criminal investigation.

1 Petitioner is further informed and believes and thereon alleges that Respondent City of Tulare's
2 actigons constitute delay and obstruction in violation of Government Code §6253(d).

3 13. Petitioner has exhausted all administrative remedies provided by the City of Tulare
4 in that he properly made a request for public records and it was denied by Respondent City of Tulare.
5 Petitioner has no adequate remedies in law because his efforts to resolve the request for the report
6 of investigation of personnel matters prepared by the outside attorney hired by Respondent City of
7 Tulare relating to the personnel claims made by Lieutenant Boatman against Council Member Jones.
8 informally have been unsuccessful. Additionally, monetary damages will not compensate Petitioner
9 for the deprivation of access to the information to which he is seeking that is being wrongfully
10 withheld by Respondent City of Tulare.

11 14. Petitioner has incurred reasonable attorney's fees for pursuing this action for which
12 he seeks recovery under the California Public Records Act.

13 Wherefore, Petitioner prays for judgment as against Respondent, and for damages as follows:

14 1. For a Writ of Mandate directing Respondent City of Tulare, and its agents, servants
15 and employees, and all persons acting under, in concert with Respondent City of Tulare, to provide
16 Petitioner with copies of or access to the above mentioned reports relating to Council Member
17 Carlton Jones on payment of the copying costs to the City of Tulare.

18 2. The Court set "times for responsive pleadings and for hearing in these
19 proceedings...with the object of securing a decision as to these matters at the earliest possible time"
20 as provided in Government Code §6258.

21 3. For reasonable attorneys' fees as determined by the Court ;

22 4. For costs of suit incurred; and

23 5. For such other and further relief as this Court may deem just and proper.

24 Dated: October 24, 2019

25 WILKINS, DROLSHAGEN & CZESHINSKI LLP

26
27 By 

James H. Wilkins

Attorneys for Petitioner, James Gregory Nunley

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, James Gregory Nunley, am the Petitioner in the above-entitled proceeding. I have read the foregoing Writ of Mandate and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this 24 day of October, 2019.



JAMES GREGORY NUNLEY

F:\Data\Nunley v City of Tulare\Pleadings\Jones Petition.wpd